In The

Supreme Court of the United States

October Term, 1940.

No. 428.

HAROLD H. MOORE, Bankrupt,
Petitioner,

v.

LEONARD HOBTON, Trustee in Bankruptcy,
Respondent.

PETITIONER'S REPLY BRIEF.

RICHARD FORD,
Counsel for Petitioner.

MERLIN WILEY,
HOWARD STREETER,
LEON R. JONES,
C. WAYNE BROWNELL,
Of Counsel.

NATIONAL LAW PRINTING CORPORATION, 4432-39 Fifth Avenue, Detroit, Michigan
PLaza 7117

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The Meaning Of the Bankruptcy Act.

(Figures in parentheses refer to pages of the printed record, except as the context clearly indicates otherwise.)

In our petition and brief we said (citing the cases) that the meaning of the word "property" in Section 70a(5) of the Bankruptcy Act (11 USCA 110a) was a Federal question, to be settled by the decisions of the United States courts rather than by decisions of state courts. Respondent in his brief (pages 3-4) answers that in *Spindle v. Shreve, 111 U. S. 542, 28 L. Ed. 512*

it was decided that the state court decisions controlled the question of whether particular property could be transferred. *This evades the issue.* Whether something is property, and whether it is assignable property, are different questions. Our position is that the trust expectancy in question here, with the attributes given it by statutes such as are in force in Michigan and elsewhere, is not property within the meaning of the Bankruptcy Act.

The Meaning Of State Statutes.

The respondent's brief asserts (page 7) that the Michigan courts apply to trust interests the statutes regulating expectant legal estates in land, citing *In re Coots, 253 Mich. 208* and *Fitzhugh v. Townsend, 59 Mich. 427;* but the point was not raised in either one of those cases and the effect of C. L. 1929, Sec. 12982, was not there considered.

It is fallacious to say that the New York cases are strictly controlling. The statutes are not identical, in that the New York statutes relate to real and personal property and so might include the cause of action to which the *cestui's* trust interest has been reduced; while the Michigan statutes relate to real property only, as the Michigan courts have pointed out: *Palms v. Palms, 68 Mich. 355 at 379.*

The trial court found without contradiction that the testator's controlling intention was the protection of the widow, who actually survived for ten years and until long after the adjudication (38), and that the possibility of anything being received by this bankrupt

being so doubtful as to have no market value (38). By *Jones v. Harrison (C. C. A. 8, 1925), 7 F. (2d) 461* and *Perry v. Avery, 148 Mich. 211*, these facts are important *indicia* of a spendthrift trust.

The respondent's brief announces (page 9) that "none of the decisions of any other Circuit Court of Appeals in any way holds that the law of Michigan is different than that adjudicated by the Circuit Court of Appeals in the instant decision." *This again avoids the issue.* There is a conflict between the decision in the instant case and the decisions of the Supreme Court of Michigan; and there is a conflict between the decision in the instant case and the decisions of federal and state courts under similar local laws; the principal authorities are cited in our former brief, pages 11, 13-16.

Analogy To Tax Cases.

This court has recently considered the taxation of expectant interests, and has held that an expectancy similar to the one in dispute here has no value for tax purposes: *Humes v. United States, 276 U. S. 487, 72 L. Ed. 667.* By authority of *Helvering v. Hallock, 309 U. S. 106, 84 L. Ed. 382*, merely formal aspects ought not to be decisive:

> "It therefore becomes important to inquire whether the technical forms in which interests contingent upon death are cast should control our decision. * * * Such an essay in linguistic refinement would still further embarrass existing intricacies. It might demonstrate verbal ingenuity, but it could hardly strengthen the rational foundations of law. The law of contingent and vested remainders is full

of casuistries. * * * Essentially the same interests, judged from the point of view of wealth, will be taxable or not, depending upon elusive and subtle casuistries which may have their historic justification but possess no relevance for tax purposes. These unwitty diversities of the law of property derive from medieval concepts as to the necessity of a continuous seisin. *Distinctions which originated under a feudal economy when land dominated social relations are peculiarly irrelevant in the application of tax measures now so largely directed toward intangible wealth.*" (Italics added.)

The same thoughts apply to the problem of expectant trust interests in bankruptcy. The interest which the bankrupt had at the time of his adjudication, *before it was known whether or when or by whom the trust property would be enjoyed,* was not an asset in any commercial sense, or in any real sense. Under the existing decisions it ought not to be held to be property within the meaning of the Bankruptcy Act. The District Court, rather than the Circuit Court of Appeals, reached the more reasonable result.

Respectfully submitted,

RICHARD FORD,
Counsel for Petitioner.

MERLIN WILEY,
HOWARD STREETER,
LEON R. JONES,
C. WAYNE BROWNELL,
Of Counsel.